IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE A.K.BASHEER

FRIDAY, THE 25TH MAY 2007 / 4TH JYAISHTA 1929

WP(C).No. 15453 of 2007(M)

PETITIONER:

DR.E.ABDUL SALIM,
PROFESSOR OF SURGERY & HEAD OF THE DEPARTMENT,
TD MEDICAL COLLEGE, ALAPPUZHA, "SHIFA",
KANIYAPURAM, THIRUVANANTHAPURAM.

BY ADV. SRI.V.K.PEERMOHAMED KHAN

RESPONDENTS:

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1. STATE OF KERALA,
REPRESENTED BY THE CHIEF SECRETARY,
SECRETARIATE, THIRUVANANTHAPURAM.

2. SECRETARY TO GOVERNMENT,
HEALTH AND FAMILY WELFARE DEPARTMENT,
SECRETARIATE, THIRUVANANTHAPURAM.

3. DR.K.BALAGOPAL, PROFESSOR OF SURGERY,
MEDICAL COLLEGE, KOTTAYAM.

4. DR.R.V.PRASAD, PROFESSOR OF SURGERY,
MEDICAL COLLEGE, THRISSUR.

BY GOVT.PLEADER SRI. T.T.MUHAMOOD

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 25/05/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

EXT.P1: TRUE COPY OF JUDGMENT IN WP.30970/05.

EXT.P2" TRUE COPY OF ORDER ISSUED BY R2.

EXT.P3: TRUE COPY OF LABORATORY TEST.

EXT.P4: TRUE COPY OF REPRESENTATION SUBMITTED BY PETR.

A.K. Basheer, J.

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W.P(C) No. 15453 of 2007

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Dated this the 25th day of May, 2007.

J U D G M E N T

Petitioner who is presently working as Professor of Surgery and Head of the Department in T.D.Medical College, Alappuzha is aggrieved by the inaction on the part of respondent No.2 to accede to the request made by him in Ext.P4 representation. Learned counsel submits that the petitioner has made a specific request to transfer him to the available vacancy of Professor in the Medical College at Thiruvananthapuram. Petitioner tries to draw support from clause 4 of the order issued by the Government in G.O (P)12/04/P & ARD dated September 10, 2004 in support of his plea that the request made by him is only legitimate and eminently justifiable. Petitioner has also stated various reasons in the writ petition as well as in Ext.P4 as to why his request for transfer to Thiruvnanthapuram cannot be ignored or overlooked.

2. When this writ petition came up for admission on May 23, 2007 petitioner was directed to take out notice to the respondents through special messenger. Though even at that time petitioner had prayed that he will be satisfied if an appropriate direction is issued to respondent No.2 to consider and pass orders on Ext.P4, nevertheless it was thought that it would be more appropriate if the party respondents were also heard, because any order that may be passed on Ext.P4 may have an adverse impact on the claim made by those respondents. Though notice has been served on respondent No.3, he has not chosen

to appear either in person or through counsel. It is seen from the record that respondent No.4 was not available in the office at the time when the special messenger took out notice.

3. I have heard learned counsel for the petitioner and the learned Government Pleader. I have also perused the materials placed before me. In the peculiar facts and circumstances I am satisfied that the request made by the petitioner to keep in abeyance any proposal for transfer of respondents 3 and 4 to Thiruvananthapuram till a decision is taken on Ext.P4 is only just and reasonable.

4. In the above facts and circumstances the writ petition is disposed of with a direction to respondent No.2 to consider and pass orders on Ext.P4 strictly on its merit and in accordance with law as expeditiously as possible, at any rate within one month from the date of receipt of a copy of this judgment. While taking a decision on the matter, respondent No.2 shall keep in view the Government order referred to above. It shall be ensured by respondent No.2 that not only the petitioner and respondents 3 and 4 but also all others who are likely to be affected by the order that may be passed by him, are afforded sufficient opportunity to be heard before any decision is taken.

Petitioner shall produce a certified copy of the judgment along with a copy of the writ petition before respondent No.2 for compliance. He shall send copies of the judgment and Writ Petition to respondents 3 and 4 also for information.

A.K. Basheer

Judge.

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